

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE: ZIMMER NEXGEN KNEE
IMPLANT PRODUCTS LIABILITY
LITIGATION

] MDL No. 2272

] **SHORT FORM COMPLAINT FOR**
] **ZIMMER NEXGEN KNEE IMPLANT**
] **PRODUCTS LIABILITY LITIGATION**
]
]
]

This applies to:

JACK L. PERRY and CONNIE PERRY,

] **JURY TRIAL DEMAND**
]
]

Plaintiffs,

vs.

] ZIMMER, INC., ZIMMER HOLDINGS,
] INC., ZIMMER ORTHOPAEDIC SURGICAL
] PRODUCTS, INC.,
]

Defendants.
]
]

PLAINTIFFS' ABBREVIATED SHORT FORM COMPLAINT FOR
ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION

Plaintiffs incorporate by reference Plaintiffs' Master Long Form Complaint in In Re: Zimmer NexGen Knee Implant Products Liability Litigation, MDL No. 2272, filed as of January 12, 2012, as Document No. 211. Pursuant to an Order by the Honorable Rebecca Pallmeyer, the following Short Form Complaint is utilized in this action.

Plaintiff selects and indicates by checking off the appropriate spaces, those products and claims that are specific to his or her case. Where certain claims require specific pleadings or case specific facts and individual information, plaintiff shall add and include them herein.

1. Plaintiffs, Jack L. Perry and Connie Perry, states and brings this civil action before the Court for the United States District Court for the Northern District of Illinois as a related action in the matter entitled IN RE: ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2272. Plaintiff is filing this short form complaint as permitted and approved by Order of this Court, and adopts and incorporates by reference those allegations in the Plaintiffs' Master Long Form Complaint and any and all amendments thereto.

ALLEGATIONS AS TO VENUE

2. Venue of this case is appropriate in the U.S. District Court of State of Kansas. Plaintiff states that but for the Order permitting direct filing into the Northern District of Illinois pursuant to Case Management Order No. __, Plaintiff would have filed in the U.S. District Court of the State of Kansas. Therefore, Plaintiff consents that at the time of transfer of this action back to the trial court for further proceedings, that this case be transferred to the above referenced District Court.

3. Plaintiff Jack Perry is a resident and citizen of [state] Kansas and claims damages as set forth below.

4. Plaintiff's Spouse Connie Perry, is a resident and citizen of [state] Kansas _____, and claims damages as a result of loss of consortium. ~~[Cross-out Spousal Claim if Not Applicable]~~

5. Plaintiff was born on [date] August 1, 1948.

6. Plaintiff is ~~filing this case in a representative capacity as the [administrator/personal representative/executor/other]~~ _____ of the ~~[Estate of]~~ _____, ~~[Cross out if Not Applicable]~~ A copy of the Letters of Administration or other authority to proceed on behalf of the Estate, where required, is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent. n/a

ALLEGATIONS AS TO INJURIES

7. Plaintiff was implanted with a Zimmer NexGen® Knee device(s) on his/her left knee on or about [date] Feb. 15, 2010 at Kansas Medical Center hospital, by Dr. [implanting surgeon] Tarun Bhargava.

8. On or about [date] June 2012, Plaintiff suffered personal and economic injuries as a result of the implantation of the following Zimmer NexGen® Knee device(s):

<u> X </u>	Zimmer NexGen LPS-Flex
<u> </u>	Zimmer NexGen CR-Flex
<u> </u>	Zimmer NexGen GSF LPS-Flex
<u> </u>	Zimmer NexGen GSF CR-Flex
<u> </u>	Zimmer NexGen MIS Tibia
<u> </u>	Other Zimmer Device(s) (Attach separately allegations)

9. Plaintiff underwent revision surgery with respect to the defective Zimmer NexGen® Knee device(s) on [date] June 11, 2012, at [hospital] Kansas by Dr. Paul Pappademos Surgery & Recovery Center or Plaintiff will be undergoing revision surgery with respect to the defective Zimmer NexGen®

~~Knee device(s) on or about [date] _____, or Plaintiff has not yet scheduled a revision surgery with respect to the defective Zimmer NexGen® Knee device(s).~~

10. Plaintiff has suffered injuries as a result of implantation and revision/explantation of the Zimmer NexGen® Knee device(s) manufactured by defendants as described in the forthcoming Plaintiff's Fact Sheet and other responsive documents in discovery provided to the defendants and/or obtained by the defendants through Plaintiff's authorization and are incorporated by reference herein.

11. At the time of implantation with the Zimmer NexGen® Knee device(s), the plaintiff resided at [address] 850 N. Cottonwood Cir., Benton, Kansas 67017.

12. The defendants by their actions or inactions, proximately caused Plaintiff's injuries.

13. Plaintiff claims damages as a result of:

- ☒ injury to herself/himself
- ☐ injury to the person represented
- ☐ wrongful death
- ☐ survivorship action
- ☒ economic loss
- ☒ loss of services
- ☒ loss of consortium

14. Neither Plaintiffs nor their physicians, through the exercise of reasonable

diligence, could have detected the defective nature of the Zimmer NexGen® Knee device any earlier than the evidence of loosening and/or other indication for planned revision of the defective device (s), or as the facts dictate and produced in discovery.

15. As a result of the injuries Plaintiff sustained, he/she is entitled to recovery compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

16. Plaintiff's Zimmer NexGen® Flex Knee device bears catalog Femoral (5964-17-51); Tibia (5980-47-02); Patella (59-72-066-35); Articular Surface (5962-42-10) number _____ and lot number _____. Femoral (61390321); Tibia (61379859); Patella (61414327); Articular Surface (61410097) If unknown, _____ to be provided at or before service of plaintiff's fact sheet.

ALLEGATIONS AS TO DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

17. The following claims and allegation are asserted by Plaintiffs and are herein adopted by reference:

COUNT I – STRICT LIABILITY DESIGN DEFECT

- X COUNT I (a) ZIMMER LPS-FLEX ;
- _____ COUNT I (b) ZIMMER CR-FLEX;
- _____ COUNT I (c) ZIMMER GSF LPS-FLEX;
- _____ COUNT I (d) ZIMMER GSF CR-FLEX;
- _____ COUNT I (e) ZIMMER MIS TIBIAL COMPONENTS;
- _____ Other Counts for Strict Liability – Design Defect: [ATTACH]

COUNT II – STRICT LIABILITY FAILURE TO WARN

- X COUNT II (a) ZIMMER LPS-FLEX ;
- _____ COUNT II (b) ZIMMER CR-FLEX;

_____ COUNT II (c) ZIMMER GSF LPS-FLEX;
_____ COUNT II (d) ZIMMER GSF CR-FLEX;
_____ COUNT II (e) ZIMMER MIS TIBIAL COMPONENTS;
_____ Other Counts for Strict Liability – Failure to Warn: [ATTACH]

COUNT III – STRICT LIABILITY MANUFACTURING DEFECT

 X COUNT III (a) ZIMMER LPS-FLEX;
_____ COUNT III (b) ZIMMER CR-FLEX;
_____ COUNT III (c) ZIMMER GSF LPS-FLEX;
_____ COUNT III (d) ZIMMER GSF CR-FLEX;
_____ COUNT III (e) ZIMMER MIS TIBIAL COMPONENTS;
_____ Other Counts for Strict Liability – Manufacturing Defect: [ATTACH]

COUNT IV - NEGLIGENCE

 X COUNT IV (a) ZIMMER LPS-FLEX;
_____ COUNT IV (b) ZIMMER CR-FLEX;
_____ COUNT IV (c) ZIMMER GSF LPS-FLEX;
_____ COUNT IV (d) ZIMMER GSF CR-FLEX;
_____ COUNT IV (e) ZIMMER MIS TIBIAL COMPONENTS;
_____ Other Counts for Strict Liability – Negligence: [ATTACH]

COUNT V – NEGLIGENT MISREPRESENTATION

 X COUNT V (a) ZIMMER LPS-FLEX;
_____ COUNT V (b) ZIMMER CR-FLEX;
_____ COUNT V (c) ZIMMER GSF LPS-FLEX;

_____ COUNT V (d) ZIMMER GSF CR-FLEX;

_____ COUNT V (e) ZIMMER MIS TIBIAL COMPONENTS;

_____ Other Counts for Strict Liability – Negligent Misrepresentation:
[ATTACH]

COUNT VI – EXPRESS WARRANTY

 X COUNT VI (a) ZIMMER LPS-FLEX;

_____ COUNT VI (b) ZIMMER CR-FLEX;

_____ COUNT VI (c) ZIMMER GSF LPS-FLEX;

_____ COUNT VI (d) ZIMMER GSF CR-FLEX;

_____ COUNT VI (e) ZIMMER MIS TIBIAL COMPONENTS;

_____ Other Counts for Express Warranty: [ATTACH]

COUNT VI – BREACH OF EXPRESS WARRANTY

 X COUNT VI (a) ZIMMER LPS-FLEX;

_____ COUNT VI (b) ZIMMER CR-FLEX;

_____ COUNT VI (c) ZIMMER GSF LPS-FLEX;

_____ COUNT VI (d) ZIMMER GSF CR-FLEX;

_____ COUNT VI (e) ZIMMER MIS TIBIAL COMPONENTS;

_____ Other Counts for Breach of Express Warranty: [ATTACH]

COUNT VII – BREACH OF IMPLIED WARRANTY

 X COUNT VII (a) ZIMMER LPS-FLEX;

_____ COUNT VII (b) ZIMMER CR-FLEX;

_____ COUNT VII (c) ZIMMER GSF LPS-FLEX;

_____ COUNT VII (d) ZIMMER GSF CR-FLEX;

_____ COUNT VII (e) ZIMMER MIS TIBIAL COMPONENTS;

_____ Other Counts for Breach of Implied Warranty: [ATTACH]

COUNT VIII – REDHIBITION

_____ COUNT VIII (a) ZIMMER LPS-FLEX;

_____ COUNT VIII (b) ZIMMER CR-FLEX;

_____ COUNT VIII (c) ZIMMER GSF LPS-FLEX;

_____ COUNT VIII (d) ZIMMER GSF CR-FLEX;

_____ COUNT VIII (e) ZIMMER MIS TIBIAL COMPONENTS;

_____ Other Counts for Redhibition: [ATTACH]

 X COUNT IX – LOSS OF CONSORTIUM

_____ COUNT X – WRONGFUL DEATH

_____ COUNT XI – SURVIVAL ACTION

 X COUNT XII – VIOLATION OF CONSUMER PROTECTION
STATUTES:

[State] Kansas and applicable statute: K.S.A. 50- 623-627

 X COUNTY XIII – UNJUST ENRICHMENT

 X COUNTY XIV – PUNITIVE DAMAGES

PLAINTIFF(S) ASSERTS THE FOLLOWING ADDITIONAL CAUSES OF ACTION
[ATTACH ADDITIONAL PAGES AS NECESSARY]: None.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For an award of attorney's fees and costs;
5. For prejudgment interest and the costs of suit; and
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Dated: August 23, 2012

Respectfully submitted,

HUTTON & HUTTON LAW FIRM, L.L.C.

/s/ Blake A. Shuart

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on August 23, 2012, a copy of the foregoing Plaintiffs' Abbreviated Short Form Complaint for Zimmer NexGen Knee Implant Products Liability Litigation was filed electronically by using the CM/ECF system, which will deliver the document to all counsel of record.

/s/ Blake A. Shuart

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